

TASMANIA
LAW REFORM
INSTITUTE

Offending while on bail

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Executive summary

Bail exists so that people charged with an offence but not yet found guilty may remain free in the community. Generally, when deciding whether to grant bail the primary consideration is whether the person will appear in court when required to do so. However incidents of people released on bail committing further offences during their bail period has led to pressure to toughen bail laws. This has already occurred in some jurisdictions, such as New South Wales, where the presumption in favour of bail has been removed if the offence was allegedly committed while on bail.

This research paper examines the extent and nature of offending while on bail. This was done by seeing how often people who were charged were already on bail (for a previous offence) at the time of charge. The study also looked at the types of offences people were charged with, and the types of offences they were on bail for when charged.

The main findings of the study are:

- On 25.7% of the charge occasions, the person charged was already on bail.
- On charge occasions involving people who were already on bail –
 - a property offence was charged on 44.2% of these charge occasions;
 - an offence against the person was charged on 12.8% of these charge occasions;
 - the person charged was already on bail for a property offence on 42.4% of these charge occasions.

While the Institute would endorse attempts to reduce this level of offending, a cautious approach is recommended. In the Institute's view the benefits of granting bail and maintaining the presumption in favour of bail outweigh the *possible* gains of imposing the kind of tough bail laws (eg removing the presumption in favour of bail in certain circumstances) that have recently been introduced in NSW, WA and the ACT. The Institute takes this view for the following reasons:

1. The significant benefits of granting bail for both the defendant and the community. These include allowing defendants to maintain employment, family and social ties, and saving the state the expense of keeping them in custody.
2. Removing the presumption in favour of bail infringes the presumption of innocence, which is a key aspect of our criminal justice process.
3. The findings of this study indicate that the level of offending while on bail in Tasmania is similar to that in other jurisdictions. Furthermore, people who are charged with offending while on bail were most likely to be charged with, and to be on bail for property or public order type offences. Such offences are often of a minor nature. While these offences can have a significant impact on victims, often they would not lead to a sentence of imprisonment. This makes it difficult to argue that the mere allegation of such offences justifies detention.
4. Evidence that toughening laws would have little impact on the level of offending while on bail or on overall crime levels because of the difficulty in predicting re-offending and the small percentage of total crime that is dealt with by the courts
5. More appropriate options are available, such as making improvements to the bail decision making process (eg by providing better information to those making this decision) and the bail system (eg by improving the use of bail conditions and supervision, and the way breaches of bail are dealt with) and undertaking further research of the phenomenon of offending while on bail.

Part 1

Introduction

This paper investigates the extent and nature of offending while on bail by asking how many people are charged with further offences when they are already on bail, and by looking at the types of offences they are charged with, and the types of offences they were on bail for. This topic was referred to the Law Reform Institute by the former Attorney-General, following public and police dissatisfaction with people re-offending whilst on bail.

In November 2001 the former Attorney referred the following questions to the Institute:

Bail:

1. Examine how often is bail refused and upon what grounds.
2. Examine whether the principles of granting or refusing to grant bail require codification or consolidation from the common law principles. Should factors other than the established common law principles be considered for inclusion in such codification or consolidation? Eg the likelihood of an offender committing a further offence while on bail considered in the hearing of a bail application.
3. What percentage of court orders granting bail result in charges of breach of bail or failure to appear?
4. What is the frequency with which repeat offences are committed while an offender is on bail?
5. What is the impact of the constraints and special considerations of the *Youth Justice Act 1997* upon sentencing practice and upon applications for bail?

The Institute was unable to undertake a law reform project within these precise terms of reference due to data and resource limitations.¹ This research paper attempts to answer the fourth question. The issue of offending while on bail was chosen as the focus of this study as it appeared to be at the heart of dissatisfaction with current bail practices. An attempt was also made to address the third question, however due to difficulties in data analysis, this was discontinued. Questions 1, 2, 3 and 5 may be examined at a later date.

Bail: an introduction

Bail is the process whereby a person who is charged with an offence, or found guilty of an offence but awaiting appeal or sentence, is released from custody upon giving an undertaking that they will appear in court on a specified date.

Bail may be granted by police or by the courts (although in some situations it may only be granted by the courts). Where a person has been taken into custody (usually by arrest²) for a simple offence³ they must be granted police bail unless there are reasonable grounds for believing that it would not be in the interests of justice to do so.⁴ If

¹ The data limitations will be discussed in more detail later in this paper – see especially Appendix A. Essentially the problem is due to the fact that to find the full ‘history’ of a single individual a number of data sources must be accessed and consolidated. This is particularly complex where an individual has been charged on more than one occasion, or with more than one offence.

² The person may also have been taken into custody for a breach of duty, pursuant to a warrant issued by a justice under section 12 of the *Bail Act 1994* or to facilitate the making of an application for a restraint order (*Justices Act 1959*, s 34(1)).

³ A ‘simple offence’ means any offence (indictable or not) punishable, on summary conviction before justices, by fine, imprisonment, or otherwise: *Justices Act 1959*, s 3.

⁴ *Justices Act 1959*, s 34(1). The lack of detail and attention given to the grant of police bail was criticised in the Australian Law Reform Commission’s Report No.2, *Criminal Investigation*, 1975, at 88. The Tasmania Police Manual contains no guidelines for police on when the interests of justice would indicate that bail should be refused.

police bail is not granted, or if the person is charged with an indictable offence⁵ the person must be taken before a justice for the matter of bail to be determined.⁶ However, where a person is charged with an indictable offence they may be released on police bail following questioning or investigation under the *Criminal Law (Detention and Interrogation) Act 1995* (s 4). In addition, bail may be re-granted or re-refused on any occasion on which a person is taken into custody (eg when appearing in court in answer to police or court bail or following a period of being remanded in custody or released on recognisance) during the trial and sentencing process.

The bail system reflects one of the cornerstones of our justice system: the presumption of innocence. Until trial and proof of guilt the law presumes all alleged offenders to be innocent. Granting bail to an alleged offender allows them to retain their liberty until their guilt can be determined.⁷ The desirability of upholding the presumption of innocence by granting bail must be balanced with the need to ensure alleged offenders do not abscond.

Release on bail can be unconditional, or subject to a wide range of conditions. Bail conditions can be used to increase the likelihood that the alleged offender will appear in court and also to protect victims, witnesses or the community generally. Examples of such conditions are:

- requiring the person to report at a specified place at a specified time;
- limiting the person's movements and social intercourse;
- that the person deposit a specified amount of money to be forfeited to the Crown if the person fails to appear before a court as required or fails to comply with a condition of the order for bail; or
- that one or more suitable persons (other than the person admitted to bail) provide surety. In other words they undertake to forfeit a specified sum of money if the person admitted to bail fails to appear before a court as required or fails to comply with a condition of the order for bail.

The decision to grant bail: competing interests

Relevant considerations to the decision to grant bail are not set out in legislation in Tasmania, but are contained in case law. The primary consideration has traditionally been the likelihood that the person will answer bail – i.e. will appear in court when required by the bail notice.⁸ In an attempt to determine whether a person is likely to answer bail the court will give consideration to the following factors:⁹

- The nature of the alleged offence and severity of punishment
- The strength of evidence against the person
- The person's family, social and employment ties to the community
- Any mental or health problems suffered by the person
- The person's past history of answering bail

In addition, the need to protect victims, witnesses and the community generally may be taken into account in determining whether bail should be granted.

In deciding whether to grant bail there must be a balancing of competing interests. Consideration must be given to the interests of the alleged offender, as well as to the interests of the state and community. The state and community interests are complex – with some in favour of granting bail and others opposed.

Interests of defendants in receiving bail

- The most obvious interest of an alleged offender is to remain at liberty – enjoying their freedom and normal daily activities.

⁵ However if a person charged with an indictable offence is first questioned under the *Criminal Law (Detention and Interrogation) Act 1995* then they can be granted police bail in accordance with s 4 of that Act.

⁶ The power for a justice to admit a person to bail is in s 35(a) of the *Justices Act 1959*.

⁷ Likewise, the purpose of bail granted to a person awaiting sentence is to avoid infringing their liberty (because it has not yet been determined that this is appropriate).

⁸ *R v Fisher* [1964] Tas SR 318.

⁹ *Ibid.*

- In addition to the loss of liberty, remand has many detrimental consequences. People remanded in custody may lose employment and income, contact with family and friends and suffer damaged reputations. Such losses, and the custodial environment generally, may have negative flow on effects to a person's physical and mental health.
- Not being granted bail can also impact on a person's ability to prepare a defence due to difficulties in communicating with their lawyer.
- Research indicates that people who are not granted bail are more likely to plead or be found guilty than those who are granted bail, and are also more likely to receive a custodial sentence. However it should be emphasised that this may well be due to bail being refused more often when there is a strong case against the defendant, and when the offence charged is serious.¹⁰

Interests of the state/community in granting bail

The state has a number of interests in granting bail in appropriate cases.

- First, the state and community have an interest in the well-being of its individual members. In addition to the defendant, bail may benefit the defendant's family, employer and community generally.
- Secondly, there are financial incentives for the state to grant bail. Keeping defendants on remand is expensive (approximately \$150 per day¹¹). Additionally, if a defendant's life is disrupted by remand there may be further costs to the state such as social security benefits for the defendant and/or their family.
- Thirdly, the presumption of innocence gives the state an interest in granting bail both from a moral point of view and in order to uphold the established criminal justice system that the presumption underpins.

Interests of the state/community in refusing bail

- The state and community have an interest in ensuring defendants appear in court to answer the charges against them. Failure to prosecute people who have absconded undermines confidence in the judicial system and diminishes deterrence. Furthermore, reapprehending people who do not answer bail wastes state resources.
- There may be a risk that a defendant released on bail will pervert the course of justice (for example by intimidating witnesses), or commit further offences.
- Victims, police and some sectors of the community may also have a particular interest in having a particular defendant held on remand, especially when they feel certain of a particular suspect's guilt.

This balancing of interests tends to weigh in the defendant's favour, and this is reflected in the general presumption that bail should generally be granted: 'prima facie every accused is entitled to his freedom until he stands trial'.¹² As stated above, this is a statutory presumption in the case of simple offences.

However, there appears to be a perception that bail is granted too frequently. Current 'get tough on crime' attitudes in some sectors of the community have focused attention on the question of the frequency with which bail is granted. A particularly prominent community concern is the issue of defendants offending whilst on bail. Understandably, the police and public feel frustrated if, when alleged offenders are apprehended and charged and released into the community again, they re-offend. The public desire protection from such criminal acts and

¹⁰ RE Fitzgerald and P Marshall, WA Ministry of Justice, *Towards a more objective basis for bail decision making*, paper presented at the 3rd National Outlook Symposium on Crime in Australia, convened by the Australian Institute of Criminology, Canberra, March 1999, citing: C Flood-Page and A Mackie, (1998) *Sentencing Practice: an examination of decision in magistrates' courts and the Crown Court in the mid-1990's*, Home Office Research Study 180. Home Office: London; and R Hood with G Cordovil, (1992), *Race and sentencing: a study in the Crown Court. A report for the Commission for Racial Equality*, Clarendon Press: Oxford. In the UK it was found that '[t]he majority of remand prisoners are found guilty – nearly 80% in 2000. 48% of all men and 36% of all women who enter prison as remands subsequently receive a custodial sentence': Social Exclusion Unit, Office of the Deputy Prime Minister, UK, *Reducing re-offending by ex-prisoners* July 2002, Annex B, citing Home Office, *Prison Statistics England and Wales 2000/01*, 2001.

¹¹ Craig Knight, Acting Director of Prisons, personal communication, 27/10/2003.

¹² *R v Fisher* [1964] Tas SR 318; Serial No 46/1964.

the police do not want to be burdened with the task of dealing with repeat offenders. A letter received by the Institute clearly expresses these feelings:

... my home was broken into at 2am and I was awakened by two masked gunmen. I was bound and threatened.

They ransacked my house and left seven hours later having decided to access my bank account when the bank opened at 9am.

When the main offender was charged he was released under "very strict conditions".

Within two months he went on to commit serious crimes against two people at Latrobe.

I am left very disillusioned with the justice system – even more so when I believe he was on bail at the time he assaulted me in my home...

Thus, there appears to be a conflict. In deciding whether or not to grant bail the law's primary consideration is whether the alleged offender is likely to appear in court. In contrast, it appears that in the view of some sectors of the public the primary consideration should be community protection.

Developments in other states

Public and police dissatisfaction with defendants re-offending while on bail has led some states to remove the presumption in favour of bail for alleged recidivists:

- Western Australia amended the *Bail Act 1982* (WA) in 1998¹³ to remove the presumption for those charged with a 'serious offence' while on bail for a 'serious offence'¹⁴ and to require that, if the alleged offence is committed in an 'urban area' (i.e. Perth) the bail of such persons must be determined by a magistrate or judge.

- In 2001 the ACT enacted the *Bail Amendment Act 2001* which created a presumption *against* bail for people accused of committing a serious offence whilst on bail for a serious offence (s 9A). A serious offence is defined as an offence punishable by imprisonment for five years or more (eg sexual assault, robbery, burglary). People to whom the presumption applies will be entitled to bail only if special or exceptional circumstances exist justifying the granting of bail. Even where special or exceptional circumstances exist, the general considerations that are contained in the *Bail Act 1992* (ACT) (ss 22 and 23), such as the need to consider the likelihood of the person absconding, re-offending or being a danger to the community, still apply.¹⁵ These amendments appear to have been made in response to police frustration, courts feeling constrained by the presumption in favour of bail, and a belief that the amendments could reduce property crime (especially burglaries).¹⁶ Subsequently, in July 2001 the ACT Law Reform Commission recommended also reversing the presumption in favour of bail for all people charged with particular serious offences.¹⁷ This recommendation was not supported by the Government.¹⁸ In 2003 a bill to amend the *Bail Act* in accordance with the recommendations of the ACT Law Reform Commission, presented by the Shadow-Attorney-General, Mr Bill Stefaniak, was not passed by the lower house.¹⁹

- In 2002 the New South Wales parliament introduced the *Bail Amendment (Repeat Offenders) Act 2002*. This Act amended the *Bail Act 1978* by removing the presumption in favour of granting bail where a person is accused of an offence which was allegedly committed at a time when the person, in connection with any other offence, was on bail, parole, serving a sentence (but not in custody) or subject to a good behaviour bond. The

¹³ *Bail Amendment Act 1998* (WA).

¹⁴ *Bail Act 1982*, Schedule 1, Part C s 3A.

¹⁵ Hansard (ACT), 29/3/01 per Mr Stefaniak.

¹⁶ See comments by Shadow Attorney Bill Stefaniak, Hansard, Legislative Assembly (Qld), 1/5/2003, pages 1288-1290.

¹⁷ ACT Law Reform Commission, *Report on the laws relating to bail*, Report No 19, July 2001. The offences included treason, murder, offences involving the use or threatened use of serious violence and trafficking.

¹⁸ Hansard, Legislative Assembly (Qld), 19/6/2003, see pages 2139-2140.

¹⁹ Bail (Serious Offences) Amendment Bill 2003.

presumption was also removed for defendants who have been previously convicted for failing to appear in court in accordance with bail (s 51 of the *Bail Act 1978*) or who are charged with an indictable offence, if they have been previously convicted of an indictable offence. This followed a number of amending Acts²⁰ in the 1990s removing the presumption in favour of bail where the defendant was accused of certain serious crimes such as murder, manslaughter, wounding, aggravated sexual assault (rape) and kidnapping. NSW has one of the highest rates of imprisonment of the Australian States (third to WA and the NT).²¹

The Victorian and Queensland Bail Acts, as introduced in 1977 and 1980 respectively, also reverse the presumption of bail in a number of instances, most notably for the present purposes where the defendant is charged with an indictable offence allegedly committed while awaiting trial for another indictable offence (Vic: s 4(4)(a); Qld: s 16(3)(a)).

The South Australian *Bail Act 1985* (SA), which has been held to be a complete code,²² provides a statutory presumption in favour of granting bail and a list of matters relevant to the decision to grant bail. The list includes the likelihood that the defendant will offend again.²³ Similarly, in the Northern Territory the *Bail Act 1982* (NT) has been held to be a complete code²⁴ and provides a statutory presumption in favour of granting bail for most offences and a list of matters relevant to the decision to grant bail which includes the likelihood that the defendant will commit an offence while on bail.²⁵

Tasmanian developments

The proportion of the Tasmanian prison population made up of prisoners on remand is increasing. In 1992 12.3% of the prison population was made up of prisoners on remand, in 2002 this had risen to 20.8%.²⁶

In January 2003 the Tasmanian Police Minister, David Llewellyn was reported in the media to be monitoring developments in New South Wales, and Liberal spokesman Michael Hodgman expressed a desire for NSW style legislation to be introduced in Tasmania.²⁷

²⁰ E.g. *Criminal Legislation Amendment Act 1995*; *Bail Amendment Act 1998*.

²¹ Australian Bureau of Statistics, *Prisoners in Australia* Cat No 4517.0, 2002, at 34.

²² *Panagiotidis v Jakacic* (1986) 41 SASR 591.

²³ *Bail Act 1985* (SA), s 10(1)(b)(ii).

²⁴ *Birdwood v Murphy* Unrep. 3/9/1997, Supreme Court of the Northern Territory, Mildren J, JA54 of 1997.

²⁵ *Bail Act 1982* (NT), s 24(1)(c)(iii).

²⁶ Australian Bureau of Statistics, *Prisoners in Australia* Cat No 4517.0, 2002, at 32.

²⁷ *The Mercury* 'Libs raise heat in push for tougher bail action', 15/1/03.

Part 2

Methodology

The extent of offending on bail is notoriously difficult to determine. Two main factors contribute to this. First, a large proportion of offending in the community is not reported to the police, and a further large proportion of crime that is reported is never solved (approximately 75%²⁸). Obviously it cannot be determined if an unsolved crime was committed by a person on bail at the time. Secondly, in most jurisdictions (including Tasmania), methods of recording offence data have not yet reached a sufficiently complete, coordinated (between different bodies) or sophisticated level to provide answers to many of the questions we have about the extent and nature of offending while on bail.

Despite these difficulties, various studies have attempted to estimate the extent of offending while on bail, using a variety of different measures. In a Home Office paper 'Offending while on bail: a survey of recent studies', Patricia Morgan discusses the different questions asked, and measures used by these studies. Morgan identifies two key questions:²⁹

- What proportion of defendants granted bail commit further offences while they are on bail?
- What proportion of recorded crime is committed by persons on bail?

This study asks a modified version of the second question: What proportion of charges laid are laid against people already on bail? Another way of putting this question is: How many charge occasions involved people who were already on bail? This measure is charge orientated: counting all of the occasions on which a person was charged with an offence. This means that people who were charged on more than one occasion during the study period were counted more than once. Therefore, this measure cannot tell us what proportion of the charged population is offending while on bail.

This study also examined the types of offences charged on each charge occasion and (where relevant) the type of offence that the person was already on bail.

Data collection process

Data for the study was obtained from four sources: the police online charging system, the Magistrates Courts' COPS system, the Magistrates Courts' CRIMES system and the Supreme Court database. The main data source was the police online charging system. Data was collected from the online charging system's date of implementation (25 May 2001) until the date on which the data was obtained for the study (5 November 2002).

1. The Police On-line Charging System

The police on-line charging system is a Lotus Notes Database which captures the detention and charge records of persons detained and charged by police. Information is entered into the database by police officers when a person is charged with an offence. Data recorded on the system includes the defendant's name, maiden name, date of birth, sex, date of the charge, station of charge, whether the person was bailed, released unconditionally or detained for court, the date the person is bailed to (if relevant), and the offence or offences they are charged with.

²⁸ Various studies have found different rates: figures reported discussed in Part 5 of this paper indicate that 20% of reported crime is cleared (see footnote 58); in the 2002-2003 financial year Tasmania Police cleared 34.1% of recorded offences (16,385 offences out of 47,999): Department of Police and Public Safety, Annual Report 2002-2003, Appendix B, at 114.

²⁹ Morgan, at iii and 1.

Unfortunately this system had not been long in operation in Tasmania and had only been implemented in major police stations when data for this study was obtained (5/11/2002). The system was implemented in the following stations on the following dates:

Hobart	25 May 2001
Devonport	28 October 2001
Launceston	23 November 2001
Burnie	23 November 2001
Bellerive	23 May 2002
Glenorchy	25 May 2002

Data was obtained for the study from these implementation dates, up to 5 November 2002.

2. The Magistrates Courts' COPS system

This data recording system was used by the Magistrates Court to record information about matters heard in the Magistrates Courts until 7/3/2002. It recorded the defendant's personal details, details of the offence(s) charged, details of Court appearance listings and details of Court outcome (eg guilty/not guilty, sentence imposed). Data was obtained from this system from 25/5/2001 – 7/3/2002. The data obtained was records of all bail applications – the name and date of birth of the applicant, the date of the application, what the defendant was charged with, and, if bail was granted, the date the defendant was next required to appear in court.

3. The Magistrates Courts' CRIMES system

This data recording system has been used by the Magistrates Court since 8/3/2002 when it replaced COPS. CRIMES is a Lotus Notes application, used to record the same information as the COPS system previously recorded. Data of bail applications made in the Magistrates Court from 8/3/2002 to 10/3/2002 was obtained from this system.

4. The Supreme Court database

The system is a basic Access database into which staff record the lodgement of written bail applications. Staff record the file number if the matter is pre-existing in the Supreme Court, the defendant's surname, first names, date of birth, date received, hearing date, judicial officer, bail granted/bail refused flag, comments/orders. Such data was obtained from 16/1/2001 – 3/10/2002.

Data Analysis

These four data bases were sourced in order to build as complete as possible a picture of each individual defendant's bail history.

The primary data source was the police online charging system. The data obtained from this source showed when a defendant was charged, and also showed whether they were granted police bail (or released unconditionally or remanded in custody) in respect of the charge, and the date until which they were granted bail. Records of bail applications from court databases were used to amplify the police data in a number of ways. First, they showed whether defendants who were remanded in custody made bail applications and the outcome of those applications. Secondly, the court data picked up some charges against defendants that were not on the police database. These charges were most likely missing from the police database because the initial charge was laid in a police station that did not have the online charging system in operation. Furthermore, the court data could reveal the continuing bail status of a defendant, by showing whether he or she was re-granted

bail upon appearing in court. Thus, we were able to determine whether a particular defendant was on bail when they were charged with an offence.

All of the data obtained from these four sources were transferred to a single Microsoft Excel file. The records were sorted by name, and date of birth, and were then sorted chronologically by date of charge/court appearance. Table 1 below is a simplified example of how this data looks.³⁰

Table 1: Sample Data

name	Date charged / appear in court	Bailed to	Station/court	charge	Custody status
Adams, Mathew	22 – 2 – 02	12 – 3 – 02	Hobart station	Possess prohibited substance	bailed
Adams, Mathew	12 – 3 – 02	31 – 4 – 02	court	Possess prohibited substance	bailed
Adams, Tim	15 – 12 – 01		Hobart station	Commit a breach of the peace	Released unconditionally
Brown, Joe	24 – 7 – 01	13 – 8 – 01	court	Common assault	bailed
Brown, Joe	18 – 1 – 02	18 – 2 – 02	Hobart station	Unlawful possession of stolen goods	bailed
Brown, Joe	30 – 1 – 02	25 – 2 – 02	Hobart station	Motor vehicle theft; resisting arrest; drink driving.	bailed

This data could then be used to determine whether a person was already on bail when they were charged with an offence or offences.³¹ For example in the fictitious data above, we can see that on the charge occasion on 18 – 1 – 02, Joe Brown was charged with unlawful possession, and he was not on bail at the time. However on the charge occasion on 30 – 1 – 02, when he was charged with motor vehicle theft and other offences, he was still on police bail for the charge of unlawful possession.

Therefore we could determine a defendant's bail status on each charge occasion,³² allowing us to calculate the proportion of charge occasions involving people who were already on bail.

The data obtained contained a number of limitations that are discussed in more detail in Appendix A and which inevitably affected the strength of the study's findings. Despite these limitations, it is felt that the findings do give at least an indication of the level of offending while on bail in Tasmania. It is hoped that more certain findings will be able to be made in the future. Recommendations are made in Part 6 of this paper relating to the recording and co-ordination of the relevant data.

³⁰ The names in this example are fictitious.

³¹ The study counted charge occasions rather than the number of offences a person was charged with.

³² Computer formulas were used to calculate this.

Part 3

Findings

Summary of results

On 25.7%³³ (1333 of 5179) of the charge occasions, the person charged was already on bail.

On charge occasions involving people who were already on bail –

- a property offence was charged on 44.2% (589 of 1333) of these charge occasions;
- an offence against the person was charged on 12.8% (171 of 1333) of these charge occasions;
- the person charged was already on bail for a property offence on 42.4% (565 of 1333) of these charge occasions.

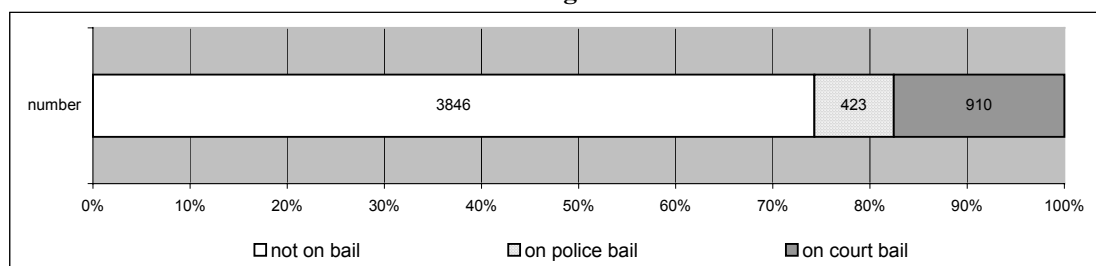
What proportion of charge occasions involved people who were already on bail?

The study counted 5179 charge occasions (for one or more ‘offences’³⁴) from 25/8/2001³⁵ to 5/11/2002,³⁶ which is roughly 14 months.

A total of 2379 defendants were involved in these 5179 charge occasions.

On 25.7% (1333 of 5179) of the charge occasions, the defendant charged was already on bail; 8.2% (423 of 5179) were on police bail, and 17.6% (910 of 5179) were on court bail.

Chart 1: Bail status of defendant on each charge occasion.



³³ Percentages for this study’s findings have been rounded to the first decimal place.

³⁴ Charges for ‘warrant of arrest’ or ‘warrant for non-payment of fines’ or failing to appear in court were not treated as charges for ‘offences’ because they were not seen as instances of the type of offending while on bail that this study was concerned with.

³⁵ records from the first 3 months of data were not included. This is because we were interested in what the suspects’ bail status was – this could only be ascertained by looking at their charge and bail history – if the record was in the first 3 months we had no or little information on that person’s charge and bail history, therefore we could not be sure whether they were on bail or not at the time they were charged.

³⁶ Court data was only received to 3/10/2002. For the period 4/10/2002 to 5/11/2002 data from the police on-line charging system only was relied upon.

Offence type

The study also examined the types of offences charged.

For the purpose of the following analysis offences were allocated to seven broad categories:

- Offences against the person – this includes offences where a victim is physically injured or threatened such as assault, assaulting a police officer, wounding, murder, rape and other sexual offences.
- Property offences – this included offences against property such as stealing, burglary, damage to property, arson, robbery, trespass, etc, as well as offences of dishonesty such as dishonestly obtaining a financial advantage by deception.
- Driving offences – this included most driving related offences, such as: drink driving and driving whilst disqualified (dangerous driving was counted separately).
- Public order offences – this group included a wide range of offences, for example offensive language to a police officer, being drunk and disorderly, public indecency, breach of a community service order, nuisance, perverting the course of justice, personating a police officer, firearms offences, etc.
- Drug offences
- Dangerous driving
- Escape
- Other / Unknown – this group was used for obscure offences which did not fit in any other group, and when the offence was not recorded (if the offence was not recorded and there was only one charge against the person we excluded that record, however if it was a subsequent charge, charged while the person was on bail, we included the charge despite not knowing what offence it was for).

If a person was charged with more than one offence on a particular charge occasion, their offence category was categorised according to the most serious type of offence they were charged with (the order of seriousness being: offences against the person, dangerous driving, escape, property offences, driving offences, public order offences, other).

Chart 2 and Table 2 below are divided into groups of charge occasions:

- Charge occasions which were the first occasion on which a person was charged during the period of the analysis ('first charge occasions');
- Charge occasions which were a subsequent occasion to the first occasion on which a person was charged ('subsequent charge occasions').

Chart 2 and Tables 2 and 3 below show that the most common offence categories charged during the period of the study (looking at all charge occasions) were property offences and driving offences. These offence groups accounted for about 30% each of the total charge occasions.

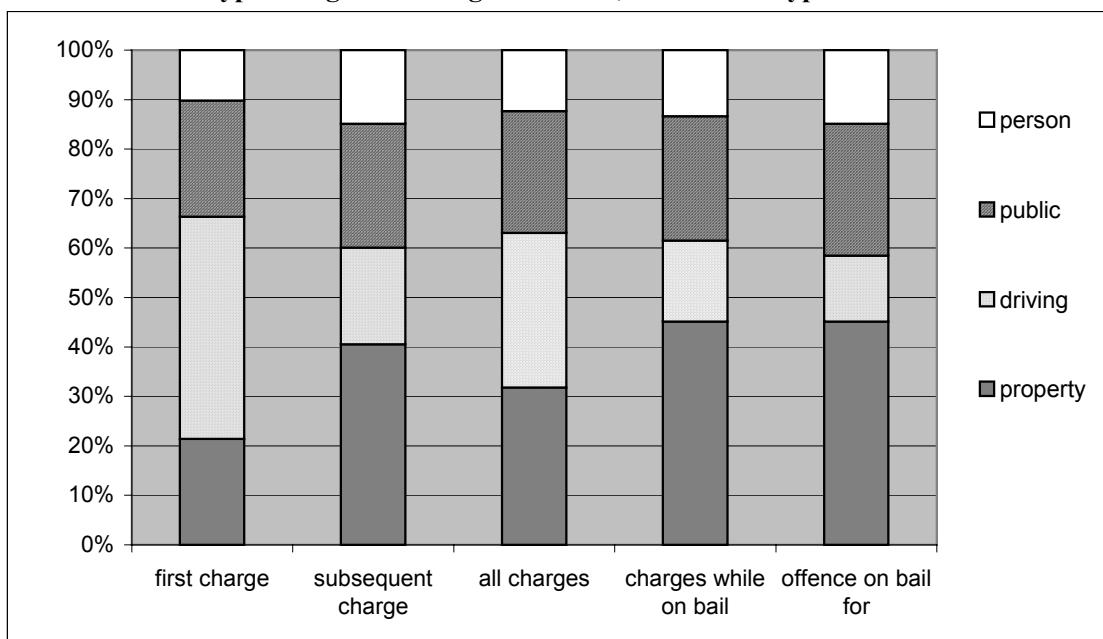
Table 2 and 3 show –

- 44% (1046 of 2379) of first time charge occasions involved driving offences.
- 39.5% (1107 of 2800) of subsequent charge occasions involved property offences.

Table 2 and 3 also show that on charge occasions involving people who were already on bail –

- a property offence was charged on 44.2% (589 of 1333) of these charge occasions;
- an offence against the person was charged on 12.8% (171 of 1333) of these charge occasions;
- the person charged was already on bail for a property offence on 42.4% (565 of 1333) of these charge occasions.

Chart 2: Offence type charged on charge occasions, and offence type on bail for.



(Nb charges for drugs and unknown offences are excluded in the above chart due to low numbers)

Table 2: Offence type charged on charge occasions, and offence type on bail for (number of people).

offence type	first charge occasion	subsequent charge occasion	all charge occasions	charge occasion involving suspect on bail	charge on bail for*
property	499	1107	1606	589 (36.7%**)	565
driving	1046	532	1578	211 (13.4%)	166
public	548	683	1231	327 (26.6%)	330
person	233	406	639	171 (26.8%)	187
drugs	51	58	109	24 (22%)	25
dang. drive	1	6	7	5	
escape		7	7	5	1
other/unknown	1	1	2	1	59
total	2379	2800	5179	1333	1333

* most recent previous charge was for this type of offence – although the person may have been on bail for other types of offences also.

** percentage of all charge occasions of that offence type

Table 2 also shows that:

36.7% of defendants charged with a property offence were on bail when charged.

13.4% of defendants charged with a driving offence were on bail when charged.

26.8% of defendants charged with an offence against the person were on bail when charged.

Table 3: Offence type charged on charge occasions, and offence type on bail for (percentage of defendants for different types of charge occasions).

charge type	first charge occasion	subsequent charge occasion	all charge occasions	person on bail when charged	person on bail for*
property	21	39.5	31	44.2	42.4
driving	44	19	30.5	15.8	12.5
public	23	24.4	23.8	24.5	24.8
person	9.8	14.5	12.3	12.8	14
drugs	2.1	2.1	2.1	1.8	1.9
other/unknown					4.4

* most recent previous charge was for this type of offence – although the person may have been on bail for other types of offences also.

‘Serious’ offences

An examination was also made of how often a charge occasion involved a person already on bail, and involved a new charge of a ‘serious’ offence. Although many crimes are serious, the crimes included as ‘serious’ were those which are very likely to be of a harmful nature and result in sentence of imprisonment: murder, grievous bodily harm, rape, armed robbery. These compare to offences such as assault, burglary or even robbery, which while often harmful, may also be charged in cases where the facts do not warrant a sentence of imprisonment. There were 11 charge occasions where a ‘serious’ offence was charged against a defendant who was already on bail. Table 4 shows the charge that the defendant was on bail for at the time they were charged with the serious offence. On only one charge occasion was the defendant on bail for another serious offence. This indicates that there is very little correlation between being charged with a serious offence and being charged with a serious offence while on bail.

Table 4: Charge occasions where a ‘serious offence’ was charged against a defendant already on bail.

Crime charged while on bail	Offence on bail for
murder	burglary
rape	Dishonestly acquiring a financial advantage
Aggravated armed robbery	Burglary, stealing, other assaults
Aggravated armed robbery	stealing
Armed robbery	Drink drive, mvs, justice offences
Armed robbery	rape
Armed robbery	Fail to appear (for mvs & destroy property)
Armed robbery	Poss. dangerous article in a public place & possession of a narcotic substance
Armed robbery	Driving under the influence
Grievous bodily harm	mvs, driving offences
Grievous bodily harm	Indecent assault

mvs = motor vehicle stealing

Part 4

Other studies of offending on bail

This Part discusses various other studies that have looked at the level of offending while on bail and makes some comparisons with the present study.

England, 1998³⁷

This Home Office study answered the question: how many of those charged were on bail at the time of charge? The study looked at data from 8 police stations, with a total of 1399 defendants. The study found that 24.6% (345 of 1399) were on bail³⁸ at the time of charge. This figure is comparable to the finding of the present study that on 25.7% of charge occasions, the defendant was already on bail.

An additional finding of the Home Office study was that ‘whether suspects were on bail to appear at court when charged varied considerably according to the type of offence with which they were charged. The proportion ranged from just 11 per cent of those charged with drugs offences ... and 37 per cent for burglary’.³⁹ This compares roughly to the findings of the present study that 13.4% of those charged with drug offences were on bail when they were charged, and 36.7% of defendants charged with property offences were on bail when they were charged.

The English study also found that ‘the likelihood of the suspect being on bail to appear at court when charged also varied according to age’⁴⁰ – suspects aged between 17 and 29 years were the most likely to be on bail. This age group was also more likely than other age groups to be arrested for property offences.⁴¹

England, 1990/1991⁴²

This study also asked the question ‘how many people charged were on bail when charged?’ It was carried out by Avon and Somerset police forces. The study was based on four separate small surveys conducted in 1990/91. Together these surveys recorded information on 1256 defendants. 28% of these were on police or court bail when charged.⁴³

New Zealand, 1994⁴⁴

This New Zealand Ministry of Justice Study measured: how many people granted bail offended while on bail? The study looked at a very large sample of cases: 47,602, this included all those finalised in 1994 where the first and last court appearance were not on the same day. The report found that 19.1% of those on bail committed an offence while on bail (no. = 9,099).⁴⁵ Using the Tasmanian data available to the present study, an approximate calculation of this measure was attempted (looking at charges rather than convictions), and it was found that

³⁷ C Phillips, & D Brown, ‘Entry into the criminal justice system: a survey of police arrests and their outcomes’ (1998) Home Office Research Study 185, Home Office: London.

³⁸ ie. Bail to appear at court. Police also have the power to bail suspects before charge for further enquiries; a further 8% of those charged were on this type of bail.

³⁹ *Op cit* note 37 at 114.

⁴⁰ The likelihood also varied according to sex – but this was explained by the high number of prostitutes on bail at one of the police stations in the study. The likelihood did not vary according to ethnic group. (*Op cit* note 37 at 114 – 115).

⁴¹ *Op cit* note 37 at 114.

⁴² Reported in P Morgan ‘Offending while on bail: a survey of recent studies’ 1992, Home Office: Research and Planning Unit.

⁴³ Morgan points out (*ibid.* at 9) that this study only counted charges for ‘notifiable’ offences, this did not include defendants charged with summary offences or dealt with by way of summons, i.e. most juveniles were not included.

⁴⁴ Ministry of Justice, New Zealand *Those on Bail in New Zealand in 1994 and their Offending* 1998.

⁴⁵ *Ibid.*, Table 4:4.

22.7% of all defendants charged were charged on at least one other occasion while they were on bail (634 out of the total number of people: 2797).

England, 1998⁴⁶

This Home Office Research Study also asked: how many defendants granted bail, offended while on bail? Five police forces recorded details of the bail/custody decision made for each defendant charged with an imprisonable offence during three months of 1993 and three months of 1994. The two separate time samples were taken because the study involved evaluating changes made to the bail process system. The records of these defendants were later checked to see what proportion were alleged to have committed a further offence during their bail period, and what proportion were convicted of a further offence (committed during that bail period). In 1993, 23% of defendants granted court bail were charged with another offence allegedly committed while on bail, and 20% were convicted of such an offence. In 1994, 20% of defendants granted court bail were charged with another offence allegedly committed while on bail, and 15% were convicted of such an offence. Looking at defendants granted police bail, in 1993, 12% were charged with a further offence, allegedly committed while on bail, and 9% were convicted of such an offence; and in 1994 11% were charged with a further offence, allegedly committed while on bail, and 8% were convicted of such an offence. This study found the highest rates for convictions for an offence committed while on bail amongst persons of no fixed address, on bail for longer periods, charged with car theft, burglary or robbery, with a previous breach of bail, who had served a previous custodial sentence, who were under 18 years old, or who were unemployed.

⁴⁶ P Morgan and P Henderson *Remand Decisions and Offending on Bail: evaluation of the Bail Process Project* Home Office Research Study 184, 1998.

Part 5

Conclusions

This paper has investigated the extent and nature of offending while on bail by asking how many charge occasions involved people who were already on bail, and by looking at the types of offences those people were charged with, and the types of offences they were on bail for.

While acknowledging the limitations of the study, the following conclusions may be drawn:

- On 25.7% of the charge occasions, the person charged was already on bail.
- People who were charged while already on bail were most likely to be charged with a property offence, and most likely to have been on bail for a property offence.

While the Institute would endorse attempts to reduce this level of offending, a cautious approach is recommended. In the Institute's view the benefits of granting bail and maintaining the presumption in favour of bail outweigh the *possible* gains of imposing of the kind of tough bail laws (eg removing the presumption in favour of bail in certain circumstances) that have recently been introduced in NSW, WA and the ACT. The Institute takes this view for the following reasons:

1. the significant **benefits of granting bail**
2. the importance of protecting **the presumption of innocence**
3. the findings of this study which indicate that **the level of offending while on bail** in Tasmania is similar to that in other jurisdictions
4. evidence that toughening laws would have **little impact** on the level of offending while on bail or on overall crime levels because of the difficulty in predicting re-offending and the small percentage of total crime that is dealt with by the courts
5. the availability of **more appropriate options** (because they have less deleterious effects) to attempt to reduce the level of offending while on bail.

These five reasons are discussed below.

1. The benefits of granting bail

There are significant benefits in granting bail for both the defendant and the community. These include allowing defendants to maintain employment, family and social ties, and saving the state the expense of keeping them in remand (see more detailed discussion in Part 1). These benefits should be extended in all appropriate instances.

Media reports and commentary indicate that the most recent changes made to bail laws in NSW will only add to the problem of a high and increasing prison population in that state.⁴⁷ This rise has already been substantially contributed to by the increasing numbers of unsentenced prisoners, with bail being refused more often. This puts financial pressure on the state and physical pressure on gaols. Civil liberty groups have widely criticised the new laws.⁴⁸

⁴⁷ T Nyman 'Repeat Offenders: new bail law will fuel growth in gaols' (September, 2002) *Law Society Journal* 50; *The Guardian* 'State of corruption' 15/5/2002; *Sydney Morning Herald*, 'Bail law doubles remand prisoners in crowded jails', 13/6/2001; Radio National, Perspective, 22/3/2002, guest: Associate Professor Chris Cunneen, Director of the NSW Institute of Criminology, Sydney University.

⁴⁸ *The Guardian* 'State of corruption' 15/5/2002.

2. *The presumption of innocence*

As was discussed in Part 1, bail is an important part of our criminal justice process. Aside from the social and financial benefits that granting bail generally brings, granting bail to defendants is necessitated by the presumption of innocence. The importance of this presumption to our legal system cannot be overstated. Removing the presumption in favour of bail is an infringement on the presumption of innocence.

Because predicting which defendants will commit further offences while on bail cannot be done with any real certainty (see discussion below), it may be necessary to refuse bail to a significantly larger proportion of defendants in order to reduce the rate of offending while on bail. This would come at a large cost to civil liberties as well as to the community. Such action would also amount to preventive detention – which is not sanctioned by the common law. The Institute endorses the comments of the Australian Law Reform Commission on this topic:

Preventive detention is not yet part of the rule of law. As Lord Denning has put it, ‘it would be contrary to all principle for a man to be punished, not for what he has already done but for what he may hereafter do.’⁴⁹

On the one hand there is the concern that persons released on bail might commit further serious offences, particularly of the crimes against property type. This attitude found judicial favour with Atkinson J who said in *R v Phillips*⁵⁰ that ‘Magistrates who release on bail young housebreakers (should) know that in 19 out of 20 it is a mistake’. The contrary point of view is, simply, that preventative detention is not part of the rule of law.

The Commission’s opposition to preventive detention in any form has already been stated above in the context of powers of arrest. If the accused on release proceeds to commit another offence he should be dealt with then. He should not be punished in advance by the loss of his liberty because of speculation as to what he might do if he secures it.⁵¹

3. *The level of offending while on bail*

The problem of offending while on bail does not appear to be especially severe in Tasmania – the levels found by this study are comparable with those found by studies in the UK and New Zealand.

Furthermore, people who were charged while on bail tended to be charged with, and to have been on bail for, property and public order type offences. Less than one percent of people who were charged while on bail were charged with a ‘serious offence’.⁵² While property offences such as burglary can have a significant impact on victims, it is nevertheless the Institute’s view that infringing a person’s fundamental human right to liberty is not justified on the grounds that they have *possibly* committed a property or public order offence and *may possibly* commit another such offence, for which, even after a finding of guilt, a sentence of immediate imprisonment would often not be appropriate.

In addition, studies⁵³ indicate that it is younger people who tend to offend while on bail. There is nothing to suggest that this is not also the case in Tasmania. The effects of being held on remand may be particularly deleterious for young people, making preventive detention even less appropriate.

It should also be remembered that this study has only examined the *charges* laid against defendants. Some defendants would not have been found guilty of some or all of the charges against them.

⁴⁹ ALRC 1975 report at para 41; footnote to: *Everett v Ribands* [1952] 2 QB 198 at 206.

⁵⁰ (1947) 32 Cr App R 47; cf. Scholl J in *R v Light* [1954] VLR 152 at 156.

⁵¹ ALRC 1975 report at para 182.

⁵² Murder, grievous bodily harm, rape or armed robbery.

⁵³ Eg the New Zealand Ministry of Justice (*op cit* note 44) found that the rate of offending while on bail was highest among those aged 17-19 years (27.4%), followed by those aged 20-24 years (23%).

4. Little impact

Evidence suggests that toughening bail laws would have little impact on the level of offending while on bail or on overall crime levels because of the difficulty in predicting re-offending and the small percentage of crime which is dealt with by the courts.

Difficulty in predicting re-offending

Predicting re-offending by people is no easy task. Some studies have identified some characteristics which are more common to people who offend on bail than people who do not offend on bail. For example, as discussed earlier, a 1998 Home Office (UK) study⁵⁴ found the highest rates for convictions for an offence committed while on bail amongst people of no fixed address, on bail for longer periods, charged with car theft, burglary or robbery, with a previous breach of bail, who had served a previous custodial sentence, who were under 18 years old, or who were unemployed. However, the reality is that when considering individual offenders it is usually not possible to predict with any degree of certainty whether a particular person will offend while on bail, let alone whether they will commit a serious or minor offence.⁵⁵ Nevertheless re-offending may be more predictable in some types of cases, for example repeat sex-offences, defendants motivated by drug addiction, defendants with mental health problems, defendants charged with breach of restraint order⁵⁶ and so on. In such cases, if appropriate in all the circumstances, bail can be refused on the grounds of the need to protect the community.⁵⁷

It is probably true that to some extent the factors currently given consideration in the decision to grant bail are very similar to the types of factors which might predict which defendants are most likely to offend while on bail. In other words, defendants who are refused bail because they are judged unlikely to appear in court when required, may well also be the defendants most likely to offend while on bail. A further study in this area could investigate this possibility by comparing the rate of failing to appear in court for defendants who offend while on bail and defendants who do not offend while on bail.

Small percentage of total crime that is dealt with by the courts

Data suggests that only a small percentage of total crime is dealt with by the courts.⁵⁸

**FOR EACH 1000 "CRIMES" COMMITTED
400 ARE REPORTED TO THE POLICE
320 ARE RECORDED BY THE POLICE AS CRIMES
64 ARE DETECTED
43 RESULT IN CONVICTIONS
1 PERSON IS JAILED**

⁵⁴ P Morgan and P Henderson *Remand Decisions and Offending on Bail: evaluation of the Bail Process Project* Home Office Research Study 184, 1998.

⁵⁵ This may be exacerbated in some bail decision making instances where there is little information provided to the decision maker about the offender or the offence.

⁵⁶ The *Justices Act 1959* (Tas) s 35(2) already provides that in determining whether to grant bail to a person who is taken into custody to facilitate the making of an application for a restraint order or a person who has been taken into custody in respect of an offence constituted by a breach of a restraint order, interim restraint order or telephone interim restraint order, the justice who is considering bail for suspects accused of breach of restraint order must consider the protection and welfare of the person for whose benefit the restraint order, order is sought or was made to be of paramount importance; and must take into account any previous violence by that person against the person for whose benefit the restraint order is sought or was made.

⁵⁷ *R v Fisher* [1964] Tas SR 318; Serial No 46/1964, at 5.

⁵⁸ Figures presented in S Bronitt and B McSherry *Principles of Criminal Law* (LBC, 2001), at 21, citing: Hogg and Brown, *Rethinking Law and Order* (Annandale: Pluto Press, 1998), at 10, based on data gathered by the Australian Institute of Criminology.

This suggests that people appearing in court are responsible for but a small proportion of overall crime. It follows that remanding more (or even *all*) of these people in custody while they await trial would not have a significant impact on the total number of crimes being committed in the community.

5. More appropriate options

Rather than refusing bail to more defendants, a more appropriate way to attempt to reduce offending while on bail would be by improving the bail decision making process and the bail system.

While it does not appear to be possible to predict with any certainty which people will offend while on bail, there may still be improvements that can be made to the bail decision making process. This may require increased funding to police and police prosecutors who are largely responsible for providing the information that the decision is based on. The detail and accuracy of information available to the decision maker may also be able to be improved by better collecting, recording and sharing of data by and between relevant agencies.⁵⁹

In addition, further researching the phenomenon of offending while on bail may assist (although possibly only to a minor extent) in making better judgements about which suspects are most likely to offend while on bail.⁶⁰ This could lead to better judgments about when it is appropriate to grant or refuse bail. However, the Institute wishes to make clear that it would still only be appropriate to refuse bail on the grounds that the defendant was likely to commit an offence on bail in cases where the predictability of offending is high and the anticipated offence is serious.

Improvements to the bail system may also reduce the level of offending while on bail. For example it may be possible to improve the use of bail conditions and supervision. Changes could be implemented based on research undertaken in other jurisdictions, along with input from key stakeholders. Additionally, a research project on this topic could be undertaken by the Institute. In considering any possible improvements to the use of bail conditions or supervision care must be taken to ensure that conditions imposed do not amount to punishment (either for the alleged offence or any anticipated re-offending). Arie Freiberg and Neil Morgan caution against recent developments of this nature in other Australian jurisdictions:⁶¹

The creation of 'pre-sentence' dispositions that closely resemble traditional sentencing options, whether based on new legislation or on the modified operation of bail laws is a creeping phenomenon in Australia, and one that tends to blur the lines between guilt, conviction and sentence.

Another matter which might be considered is the way in which breach of bail is dealt with. Monitoring and prosecuting breaches of bail may impact on breach and offending rates by bailed defendants by highlighting the importance of compliance.

⁵⁹ Relevant privacy issues would need to be explored here and are beyond the scope of this paper.

⁶⁰ It may be that there is a link between the likelihood of absconding from bail and the likelihood of offending while on bail.

⁶¹ A Freiberg, N Morgan, 'Between Bail and Sentence: The Conflation of Dispositional Options' *Current Issues in Criminal Justice*, forthcoming.

Part 6

Improving data collection

Although the data used in this study were able to give a rough indication of the level of offending while on bail, improvements in the collection and recording of this data are recommended and would dramatically improve the accuracy of any future research of this topic, enabling more accurate and detailed analysis to be undertaken. While there may be many ways that this data collection and recording can be improved, the following specific recommendations are made in relation to databases used in this study.

While the police online charging system's main purpose is to capture detention and charge records in order to decrease processing time, the system has the potential to provide useful information to bail decision makers and researchers. The main aspect of the system which hindered this research project was that data was sometimes missing, inaccurate or difficult to process because it was not entered uniformly. More specifically:

- Spelling mistakes are made with names – this is probably unavoidable, but can clearly have a large impact when records are sorted by name in order to view a particular person's charge history.
- Data fields are sometimes left blank – while this may sometimes be appropriate, on other occasions important information such as the charge itself was missing. This may be able to be remedied by making the computer program insist on key data fields being completed.
- Data in some fields is entered unsystematically, particularly in the charge field. We were informed by the police that 'charge information can currently be recorded in one of two ways, either through free text or preferably by selecting an option from a table which contains all the charges used by the Police Prosecution system. The free text option enables data to still be entered on the rare occasions when the table option is not available.'⁶² However the impression gained from analysing the data was that the free text option is often used, if not predominately so, particularly where more than one charge is laid. It may be preferable to insist that the table option is used, but to include some more generic options, and add an additional field where free text could be used. Such a field would also be useful where entries in the charge field were non-descriptive, for example, the entry: 'Warrant For Arrest L26887/02', is clearly unhelpful in providing information to police, bail decision makers or researchers.

Further studies would also benefit from the inclusion in all the databases of fields recording:

- the date on which it is alleged the offence was committed;
- at which stage of the trial or appeal process the bail application was made;
- where bail was refused, the main reason for that refusal;
- the conditions attached to grants of bail (this is already recorded by the police and Supreme Court but not by the Magistrates Court);
- whether the person bailed has a criminal record.

Most of this data should be known at the time of recording and so it would seem to be possible for this data to be simply and quickly recorded using codes and drop-down lists.

⁶² Written correspondence, Commander P Edwards, 6/2/04.

Appendix A: Limitations of the data

The most significant limitation in the data used by this study was that it did not contain information about charges laid in police stations that did not have the on-line charging system in operation. Therefore we may not have been seeing the complete charge and bail history of some individuals.⁶³ We attempted to compensate for this problem in two ways.

First, court data was used to fill in some of this missing history. Unfortunately, at the time of obtaining data for the study, court records were only available for the south of the state. For this reason it was decided to focus on people charged in the Hobart area. Therefore, records were excluded unless they related to charges laid in the Hobart police station or a person who had at least one charge laid against them in Hobart. So for example, records relating to a person who was only charged at the Burnie police station would not have been included; but a person who was charged at Burnie, and on a different occasion charged in Hobart, would have had all the records relating to them included in the data.

Secondly, records from the first 3 months of data were not included. This is because we were interested in what the chargee's bail status was – this could only be ascertained by looking at their charge and bail history – if the record was in the first 3 months we had no or little information on that person's charge and bail history, therefore we could not be sure whether they were on bail or not at the time they were charged.

A further problem with the methodology is that it only looked at those arrested and charged with an offence. If a person's 'subsequent' offence was proceeded with by way of summons (and no court bail application was made during the proceedings) the offence would again be 'missed'.

Another problem arose due to the sheer number of records relating to some individuals. Some individuals had so many records that the computer formulas used (to calculate whether a charge was a person's first charge occasion or a subsequent charge occasion, or whether the person was on bail at the time of charge) were occasionally inadequate. This was exacerbated on occasions when a person's charge was dealt with in court on a different day to the day that it was originally bailed to (when the 'date bailed to' in the first record was the same as the 'appearance date' in a new record the computer would not count the new record as a new charge). To attempt to overcome this problem the records of defendants with 10 or more charges were manually checked for accuracy.

⁶³ It was initially intended to attempt to estimate the extent of the problem of 'missed' charges through sample checking. However, this was not possible given the project's resources as it would have involved manually checking charge books at all police stations which had not yet implemented the online charging system.